



Planning,
Industry &
Environment

Gateway determination report – PP-2021-4961

Planning Proposal to facilitate general industry at 5 Sims Road, Gerringong (0 homes and 62 jobs)

November 21



Published by NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

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1 Planning Proposal

1.1 Overview and objectives of planning proposal

Table 1 Planning proposal details

LGA	Kiama
PPA	Kiama Municipal Council
NAME	Planning Proposal to facilitate general industry at 5 Sims Road, Gerringong
NUMBER	PP-2021-4961
LEP TO BE AMENDED	Kiama LEP 2011
ADDRESS	5 Sims Road, Gerringong
DESCRIPTION	Lot 40 DP1230679
RECEIVED	29/09/2021
FILE NO.	EF21/7200 & IRF21/4791
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

Background

This proponent led planning proposal was originally supported by Kiama Municipal Council on 28 June 2021 and lodged with the Department of Planning, Industry and Environment on the planning portal on 14 July 2021.

The Department rejected the planning proposal (version 1) on 16 July 2021 because:

- *The objective of the planning proposal is to amend the Kiama LEP 2011 to allow for industrial land use of Lot 40 DP1230679 Gerringong. Clarification of the objective and/or additional objectives is required depending upon how Council chooses to implement the amendment. The Council report identified three possible amendments – introducing a General Industrial IN1 zone into the LEP; updating the land uses in the Light Industrial IN2 zone land use table; or keeping the existing Primary Production zone and applying an Additional Permitted Use (APU).*
- *There is no explanation of provisions in the planning proposal. The proposal states that feedback from the Council pre-lodgement meeting was not to include exact details on the changes as this approach will enable Council to determine the appropriate zoning and other potential amendments that may be required to the Kiama LEP 2011. Whilst the Council report identified three possible provisions, the Council resolution of 28 June 2021 only resolves to support the planning proposal. The planning proposal must clearly identify the proposed changes to the LEP including the proposed zoning or mechanism to allow*

industrial use of the site. Details on the provisions are required to ensure all other information in the planning proposal relates to, and supports the use of, the provisions. It is not possible to assess the planning proposal without knowing the proposed provisions.

- *It is noted that the watercourse on the Lot has been reconstructed north of the site and as such is no longer in the correct location on the Riparian Land and Watercourse Map in the LEP. Council may wish to update this map as part of the planning proposal and hence include an appropriate objective and provision.*
- *It is noted in the proposal that the site does not have access to town water or reticulated sewer. The proposal must be updated to identify how this matter is to be addressed as industrial uses will generate demand for these services.*

On 20 July 2021, Council resolved to support the planning proposal and ask the proponent to update the planning proposal so that it seeks to amend the Kiama LEP 2011 to include the site in Schedule 1 and list general industries and landscaping material supplies as additional permitted uses on the site.

The proponent has subsequently updated the planning proposal (version 2) and lodged it with the Department on the planning portal on 29 September 2021.

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to:

- allow Clause 2.5 and Schedule 1 of the Kiama LEP 2011 to provide for General Industry, Landscape Material Supplies and ancillary land uses on Lot 40 DP 1230679 at Gerringong which is currently zoned as RU1 – Primary Production.

The objective of this planning proposal is clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Kiama LEP 2011 as per the changes below.

Table 2 Current and Proposed controls

Control	Current	Proposed
Schedule 1 – Additional Permitted Uses (APU)	N/A	New clause to permit with development consent on Lot 40 General Industry, Landscape Material Supplies and ancillary land uses of the site including: firewood storage & sales; auto repairs/services; kitchen/cabinet manufacturing; arborist depot; processing of landscaping materials/supplies; return & earn facility; hardware supplies & sales; and plumbing/electrical supplies.
Additional Permitted Use Map Sheet APU_014	N/A	Lot 40

Number of dwellings	Development consent exists for 1 dwelling	0
Number of jobs	0	62 jobs would be created.

A concept master plan has been prepared for the site to identify the potential to service six industrial buildings/uses with supporting landscape buffers to the adjacent rural lands. Refer to **Figure 1** below. The supporting traffic report has assumed all operations on the site will operate 6 days a week from 6am to 8pm. The planning proposal states the 'exact site use would be subject to further investigation at the development application lodgement stage which could involve subdivision (Community Title or Strata) of the site and may require changes/amendment to existing easement arrangements on the site'.

It is noted that the concept plan has no statutory weight.

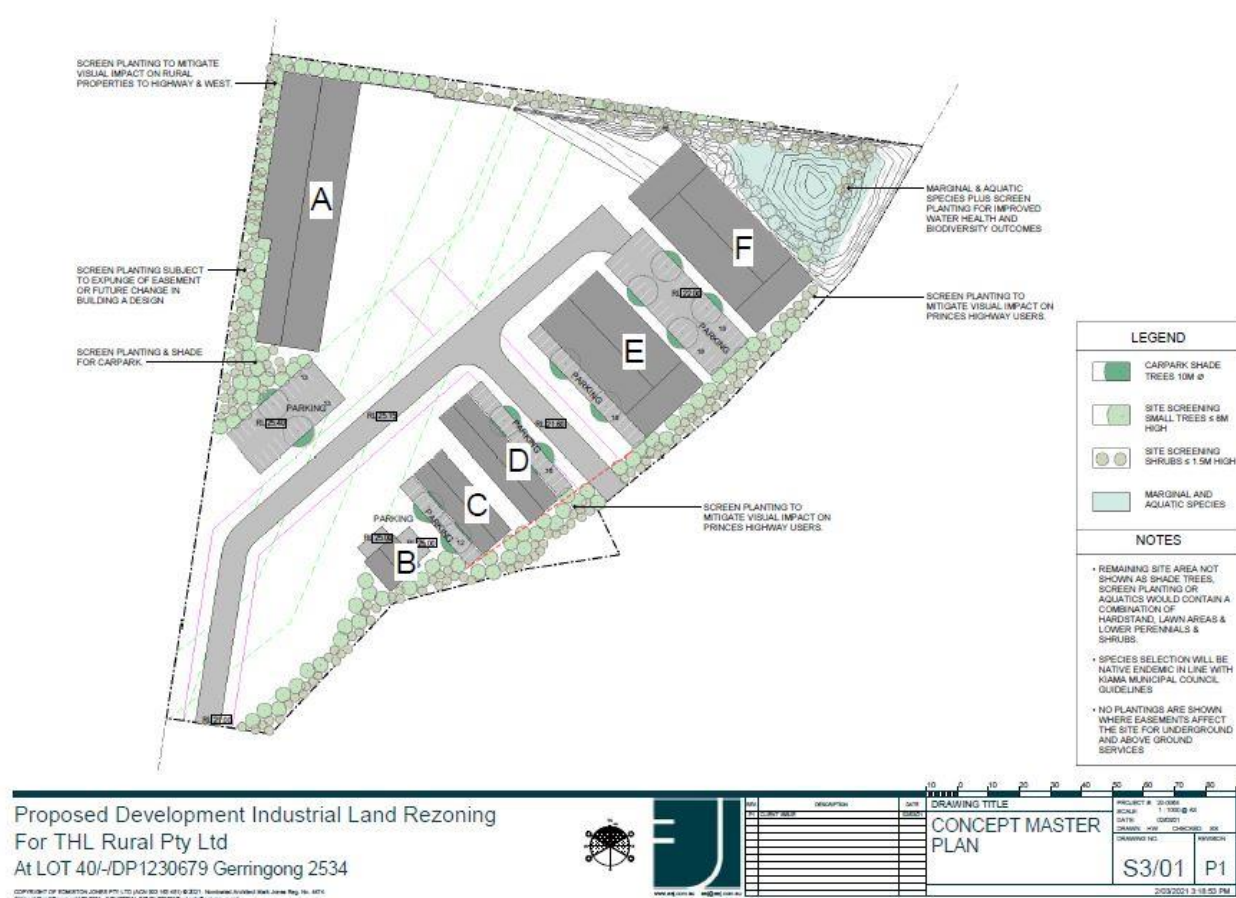


Figure 1 Concept master plan for the proposed development of Lot 40, 5 Sims Road Gerringong (source: Sims Road Gerringong Planning Proposal, Allen Price & Scarratts)

Kiama Council's report of 20 July 2021 states that 'Council can amend Schedule 1 in such a way so as to, with a relatively high amount of certainty, ensure the outcome of any future development application. For example, rather than simply listing general industries and landscaping material supplies as additional permitted uses (APUs) on the site, Council could stipulate the specific business types and sizes of general industries and landscaping material supplies for this site.'

Council considers that the use of APUs 'would ensure that the existing RU1 Primary Production zoning remains and as such, the rural objectives of the zone would be relevant when determining a

development application and that Complying Development Certificates for industrial uses could not be issued and Council would be the only determining authority for industrial uses on the site.'

The Standard Instrument provides that a type of development may be included in Schedule 1 only if it is a type of development listed in Direction 5 at the beginning of the Land Use Table. In this regard general industries, sawmill or log processing works and landscape material/supplies would fit within a type of development listed in Direction 5 of the Standard Instrument. As such, it is not possible to include an APU for the other proposed ancillary land uses.

It may be possible to take a type of development listed in Direction 5 and then limit it further. For example, it may be possible to include an APU for 'sawmill or log processing works that consists of the processing and storage of firewood', noting that 'sawmill or log processing works' are listed in Direction 5. To allow the sale of the firewood on the land it would likely be necessary to also include 'industrial retail outlet' as an APU. This approach is considered to be complicated and confusing where multiple additional uses are proposed.

Whilst APUs could be considered on the land, zoning land for its intended purpose is preferred.

The Department's guide to preparing planning proposals at page 11 states (emphasis added):

*Even when changing development controls is an appropriate means of giving effect to policy, there is still a range of options regarding how and when the new controls should be introduced. For example, **it may be more suitable to amend a land use table or rezone a site, area, locality of LGA rather than including site specific provisions to enable a new land use.***

The planning proposal should demonstrate that alternative approaches to achieving the intended outcomes of the proposal have been considered. It should be evident from this assessment that the proposed approach is the best, most efficient and most time effective approach to delivering the desired outcome.

It is prudent to consider whether the land intended to be used for industrial purposes should be zoned accordingly rather than retaining the rural zone. This is particularly the case where a new land use is proposed as additional permitted uses can be useful to reflect existing uses of land.

A General Industry Zone if used would apply a specific land use table (Council would be able to select non mandatory permitted uses) and allow for future development applications to be considered against industrial zone objectives rather than the rural focussed objectives for the Primary Production zone. It is also much clearer to see a zone on the land zoning map whereas APUs are listed in schedule 1 of the LEP and the land remains zoned for rural purposes.

The Department understands Council is considering preparing an Employment Lands Study in conjunction with the current preparation of the Kiama Housing Strategy to identify future urban development within the local government area.

1.4 Site description and surrounding area

Lot 40 DP 1230679 is triangular in shape, 2.95ha in area, with direct frontage along, and an eastern and western access connection to, Sims Road. It lies adjacent to the western side of the Princes Highway southern interchange to Gerringong, approximately 1km from the Gerringong town centre. The locality and context of the Lot is shown in **Figures 2 and 3**.

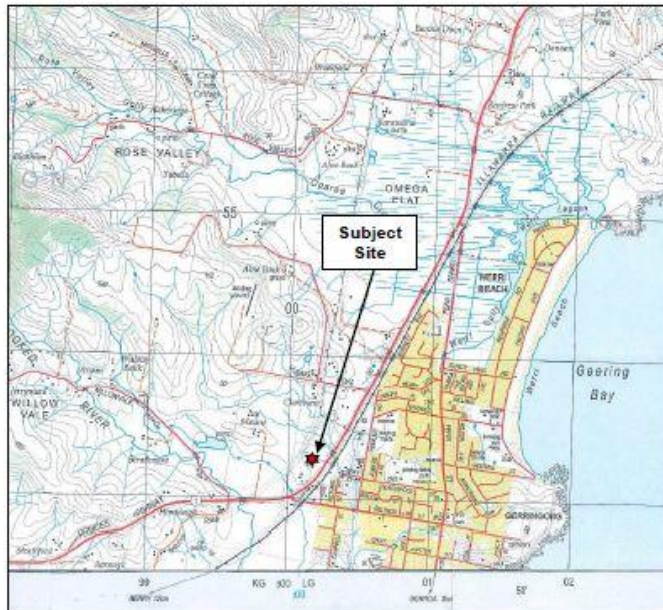


Figure 2 Site locality - Lot 40, 5 Sims Road Gerringong (Sims Road Gerringong Agricultural Viability Assessment, Cowman Stoddart Pty Ltd)

The Lot has historically been a small rural lot with a rural dwelling and used as a hobby farm for grazing stock. The Lot was acquired by Transport for NSW for the upgrade of the Princes Highway between 2013-2016.



Figure 3 Site context - Lot 40, 5 Sims Road Gerringong (Sims Road Gerringong Planning Proposal, Allen Price & Scarratts)

The house was demolished, and part of the land acquired for the construction of the Highway and realignment of Sims Road and creation of a road easement.

The remaining part of the Lot was used as an office/depot site for Transport for NSW. After the roadworks were completed, the land was remediated (removal of plant and material stockpiles, minor reshaping of the landform and revegetation with kikuyu pasture) and a new dwelling approval sought. On 15 June 2017, Kiama Council provided development consent for a dwelling house, with onsite effluent management, rainwater supply for the house and firefighting and access using the western connection to Sims Road. The consent has not been acted upon.

The Lot was sold by Transport for NSW in October 2020 to the proponent of the planning proposal.

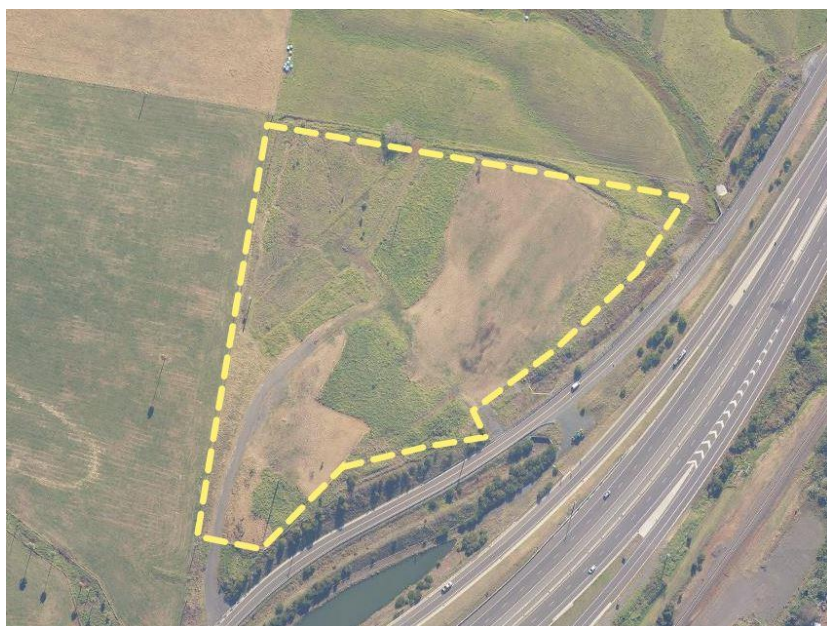


Figure 4 Aerial photograph of Lot 40, 5 Sims Road Gerringong (source: Planning Portal Spatial Viewer)

The Lot is cleared, kikuyu pasture as illustrated in **Figure 4** above. It is a moderately elevated hillcrest rise to its southern section with a bitumen access road leading up from the western connection to Sims Road. The land levels off from the end of the access track, gradually falling to the north east and draining into an upper tributary of Union Creek on the adjoining northern lot. This section of creek previously flowed on the Lot but was diverted during the roadworks. The land is not flood liable. The site does not consist of any bushfire prone land.

The Lot is mapped as Class 3 Prime Agricultural land. An Agricultural Viability Assessment contends that this value no longer exists due to the soil and land disturbance (including presence of rock and absence of topsoil) as a result of its use as a Transport for NSW's office/work depot. Transport for NSW's Phase 1 and Phase 2 Environmental Land Assessment found no traces of contaminants and that the land remained suitable for zoning as RU1 Primary Production. The site was well vegetated with kikuyu grass cover.

The Lot is constrained by easements for underground optical fibre cables and the high pressure Eastern Gas Pipeline, and multiple high-voltage electrical transmission lines which generally run in a north-south direction across the site. Refer to **Figure 5** for the location of the easement restrictions on the Lot.

The site is not serviced with water, sewer or electricity.

The Department visited the site on 14 August 2021. The landscape context is a typical south coast lush rural landscape with open pastures primarily used for dairy and beef cattle. The site is bordered to the east and south by land zoned SP2 Classified Road and Railway (Princes Highway and South Coast Railway Line) and to the west and north by large rural properties zoned RU1 Primary Production. Beyond the Princes Highway and South Coast Railway Line to the east, north east and south east is the township of Gerringong, a mix of residential and commercial with an area of B7 Business Park land. Beyond the site to the north, west and south are agricultural lands. **Figure 6** illustrates the land zoning for the site and surrounds.



Figure 6 Land zoning of site and surrounds, Lot 40, 5 Sims Road Gerringong (source: Sims Road Gerringong Economic Impact Assessment, Atlas Urban Economics)

The adjoining rural properties generally rise to the west above the site allowing open views from several residences and a winery, toward the site with the Highway and township beyond framing the backdrop of these views. The site is also visible from the northern and southern approaches of the Princes Highway.

The built form within the visual catchment of the site is rural residential to the north and west with dispersed farmhouses and more residential style hobby farm dwellings and sheds.

To the south and southeast the agricultural lands are mapped Biophysical Strategic Agricultural Lands under the SEPP (Mining, Petroleum Production and Extractive Industries) 2007. These lands are also draft mapped as State Significant Agricultural land.

To the west and north of the Lot are local heritage listed rural homesteads identified in Schedule 5 Environmental Heritage of the Kiama LEP 2011 and mapped on the heritage maps. They include I578 – Strathmore Homestead, Willowvale Road, Willow Vale to the west; I176 Aorangi Homestead, Princes Highway Toolijooa to the south west and I4 Alne Bank residence and barn Alne Bank Lane Gerringong to the north.

1.5 Mapping

The planning proposal includes the proposed change to the Additional Permitted Use Map Sheet APU_014.

2 Need for the planning proposal

The planning proposal states it is the only planning mechanism available of achieving the intended industrial land use change for the site. Council resolved on 20 July 2021 to include the site in Schedule 1 and list general industries and landscaping material supplies as additional permitted uses on the site.

Council's reports (28 June 2021 and 20 July 2021) identify a number of other planning mechanisms available to achieve industrial uses on the site, however these options were not chosen. They include:

- Rezoning the land from RU1 Primary Production to IN1 General Industry. This would also involve introducing the IN1 General Industry zone and its land use table into the Kiama LEP 2011.
- Rezoning the land from RU1 Primary Production to IN2 Light Industrial and an Additional Permitted Use for general industries.
- Rezoning the land from RU1 Primary Production to IN2 Light Industrial and making General Industries permissible in the zone.

As discussed under point 1.3 Explanation of Provisions, the Department considers that the site should be zoned according to its proposed use in preference to applying a range of additional permitted uses generally inconsistent with rural zone objectives.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Illawarra Shoalhaven Regional Plan 2041. The planning proposal states it is partly consistent with the Illawarra Shoalhaven Regional Plan 2041 with a focus on economic/employment objectives – Objectives 4, 16 and 25. Objective 9 is also applicable to the site and is a consideration when assessing the planning proposal.

Table 3 Regional Plan assessment

Regional Plan Objectives	Justification
ISRP Objective 4: Activate regionally significant employment precincts to support new and innovative economic enterprises	<p><i>Strategy 4.1 Support new and innovative economic enterprises. Strategic planning and local plans should consider opportunities to:</i></p> <ul style="list-style-type: none"> • <i>retain and manage regionally significant employment lands and safeguard them from competing pressures</i> • <i>provide flexibility in local planning controls</i> • <i>align infrastructure to support the rollout of employment land in the region.</i> <p>The planning proposal states that 'whilst not specifically identified as regionally significant employment lands, the site with proximity and relatively easy access to the Princes Highway makes it's significant in the subregional context.'</p> <p>The site is not part of a regional significant employment precinct in the Regional Plan or local Kiama plans, nor is it identified in the Employment Lands Development Monitor. The planning proposal does not justify how this site is unique compared to other lands along the Princes Highway potentially suitable for industrial uses. It also does not confirm that infrastructure is available to service the proposed industrial uses on the site. The proposal is inconsistent with this objective.</p>

<p>IRSP Objective 9: Promote agriculture innovation, sustainability and value-add opportunities</p>	<p><i>Strategy 9.1 Promote agriculture and aquaculture innovation, sustainability and value-add opportunities such as agritourism. Strategic planning and local plans should consider opportunities to:</i></p> <ul style="list-style-type: none"> • <i>protect identified important agricultural land and industries from other land uses, land use conflict and fragmentation</i> <p>The Plan identifies that 'the Illawarra Shoalhaven's agriculture production is estimated to contribute over \$104.2 million to the regional economy and the dairy industry in particular contributes 11 per cent of NSW's milk production and is worth over \$66 million. Demand for land for urban purposes puts pressure on agricultural productivity, so agricultural land must be protected, and land use conflicts minimised.</p> <p>Agricultural land, particularly in areas such as Gerringong, attracts visitors to the area. Agritourism and small-scale agricultural development can support the recovery and resilience of farm businesses in regional economies and represent a diverse and unique tourism offering, including food and wine trails, farm stays, farmers markets, and farm gate experiences.</p> <p>The RU1 Primary Production zone aims to provide opportunities for employment-generating development that adds value to local agricultural production. The zone permits with development consent land uses such as Agricultural produce industries; Bed and breakfast accommodation; Cellar door premises; Farm stay accommodation; Industrial retail outlets; and Roadside stalls. This range of uses is consistent with Objective 9 of the plan.</p> <p>The strategic need to permit the proposed additional industrial uses on the rural land has not been investigated or justified by a local employment lands study.</p> <p>The planning proposal is inconsistent with this objective.</p>
<p>IRSP Objective 16: Support the development of a circular economy</p>	<p><i>Strategy 16.1 Strategic planning and waste management strategies should consider supporting development of a circular economy and opportunities for industrial symbiosis.</i></p> <p>The planning proposal states, 'the Plan identifies that high levels of industrial activity in the Illawarra Shoalhaven presents a huge opportunity to develop a circular economy with further work required to better understand the feasibility of industrial symbiosis to maximise efficiencies, share resources and materials, reduce operating costs and improve environmental outcomes.'</p> <p>The planning proposal does include an additional permitted use for waste management.</p> <p>This objective is not relevant to the proposal.</p>

Objective 25:
Collaborate to
leverage
opportunities from
Western Sydney's
growth

Strategy 25.1 Engage and collaborate on opportunities for mutual and sustainable social, economic and employment benefits across the Illawarra Shoalhaven and Western Sydney.

The planning proposal states it 'is consistent with this objective and strategy as the proposed uses of the site could continue to work with Sydney businesses to benefit and strengthen local skills and the local economy'.

The justification in the planning proposal for the industrial use of the site is to allow local residents to relocate their businesses closer to home in Gerringong rather than travelling to Nowra or Shellharbour industrial estates. The Economic Impact Assessment states 'the proposal will provide opportunities for local Kiama business to locate and/or expand without needing to relocate outside Kiama.' There would appear to be very limited, if any, sustainable, social and employment benefits with Western Sydney. These types of benefits are more likely to occur within the regionally significant employment precincts identified in the plan.

This objective has limited application to the proposal.

3.2 Local

The planning proposal is not the direct result of a local strategy that has considered and identified the best locations throughout the LGA to be rezoned for industrial uses.

The planning proposal states it is consistent with the theme to develop a diverse and resilient economy within the Kiama Local Strategic Planning Statement (LSPS) 2020. However as discussed in the table below, the proposal is not consistent with either the theme to develop a diverse and resilient economy or the theme to protect rural landscapes.

The proposal also identifies consistency with the Kiama Regional Economic Development Strategy 2018-2022, Kiama Community Strategic Plan 2017-2027, Kiama Operational Plan 2020-21 and Delivery Program 2017-21.

Table 4 Local strategic planning assessment

Local Strategies	Justification
<p>Kiama Local Strategic Planning Statement 2020</p> <p>Theme 2 Develop a Diverse and Resilient Economy</p>	<p>Whilst the Kiama LSPS discusses a number of employment and economic sectors, it does not include or discuss general industries like those proposed in this planning proposal. The planning priorities and actions focus on the key employment sectors of tourism; health, disability and aged care; ICT/knowledge services; education and agriculture as well as light industries.</p> <p>‘In addition to the key sectors, (the LSPS identifies that) Kiama is also well placed to support economic activity and job creation in other sectors such as the creative and cultural arts economy and the continued importance of retail, construction and public administration.’</p> <p>The LSPS identifies that ‘the demand for light industrial land and premises in Kiama is solid with a number of businesses having indicated that they wish to expand. The lack of available land (only 3.58ha of land zoned for light industry) is forcing businesses that need additional space to relocate to industrial and business parks in neighbouring local government areas.’</p> <p>The Kiama LGA does not have any land zoned for general or heavy industrial uses and the LSPS does not discuss the need for any general or heavy industrial lands. Any proposal to accommodate such uses should be considered in a local employment lands strategy to identify suitable lands for this purpose rather than through a spot rezoning or by allowing additional permitted uses on the site.</p> <p>The Council report of 28 June 2021 states that ‘whilst acknowledging the need for additional industrial/employment lands the LSPS has not identified any particular sites as being suitable.’</p> <p>The Economic Impact Assessment submitted in support of the proposal states ‘the proposal represents a logical westward extension of the Gerringong industrial and employment precinct.’ As identified in the Visual Impact Assessment, the Princes Highway and South Coast Railway Line are major engineering features which divide the rural farmlands from the Gerringong urban zone through their linear nature. This appears to contradict that the proposal is a logical extension of the existing Gerringong industrial and employment precinct.</p> <p>The planning proposal does not demonstrate that it is consistent with the LSPS’s focus, priorities and actions to develop a diverse and resilient economy.</p>
<p>Kiama Local Strategic Planning Statement 2020</p> <p>Theme 3 Protect Rural Landscapes</p>	<p>The LSPS states ‘we need to be very careful about the types and mix of agricultural and/or ancillary uses that we permit in our rural zones. The introduction of uses that fundamentally shift the market value of important agricultural lands should be avoided. As should introducing smaller rural lot sizes that have the potential to impact on production capacity, land values and business viability.’</p> <p>The LSPS sets out planning priorities to protect viable agriculture and agricultural lands and protect scenic rural landscapes which include ‘review rural zonings to ensure agricultural lands are appropriately zoned; review land use tables of rural zonings to ensure an appropriate mix of uses permitted in rural zones; and investigate opportunities to introduce planning controls to protect scenic rural landscapes.’</p> <p>The planning proposal pre-empted the outcomes of these planning priorities.</p>

Kiama Regional Economic Development Strategy 2018-2022 (REDS)	<p>The Kiama REDS identifies a vision for the LGA ‘to be a strong vibrant economy outside of current holiday peaks with carefully managed growth and employment opportunities in tourism, agribusiness and other emerging industries and to capitalise on the region’s unique opportunities in digital connectivity.’</p> <p>It aims to ‘support growth in key industries and encourage 21 century industry and business models through well planned urban and rural land development.’ Actions include ‘undertake an assessment of impediments and opportunities facing the farm and agribusiness sectors’ and ‘develop a Gerringong Town Centre Masterplan and commercial market assessment to ensure satisfactory supply of employment lands to meet future needs.’</p> <p>The Kiama REDS does not identify strategies or actions for general industrial land uses or the need for sites for such uses. It does identify that the Bombo Quarry Concept Master Plan shows industrial precincts and such a Plan should consider opportunities for emerging industries and new business models.</p>
Kiama Community Strategic Plan 2017-2027 and Kiama Operational Plan 2020-21 & Delivery Program 2017-2021	<p>The planning proposal identifies that it is part consistent with Objective 3.0 A diverse, thriving economy; Strategy 3.1 Promote and encourage business development and economic prosperity in the local area; and Delivery Program 3.1.3.5 Ensure suitable land is available for small scale service industrial uses and identify modest area/s of land that is suitable in the short to medium term.</p> <p>The Council report of 20 July 2021 identified that the planning proposal is consistent with the Plan’s Objective 2.0 Well planned and managed spaces, places and environment; Strategy 2.3 The principles of sustainable development and compliance underpin town planning and local development; and Delivery Program 2.3.1 Conduct development and building assessment/approval functions in accordance with statutory requirements, policies and procedures.</p> <p>The Council report of 28 June 2021 identified that the planning proposal is consistent with the Plan’s Objective 2.0 Well planned and managed spaces, places and environment; Strategy 2.1 Maintain the separation and distinct nature of local towns, villages and agricultural land; and Delivery Program 2.1.1 Develop and implement appropriate land use plans.</p> <p>There appears to be discrepancies as to which objectives, strategies and delivery programs the planning proposal is consistent with.</p>

3.3 Section 9.1 Ministerial Directions

The planning proposal’s consistency with relevant section 9.1 Directions is discussed below.

The planning proposal identified that it is consistent with Direction 6.1 Approval and Referral Requirements, however whilst the Direction applies to all planning proposals it is not relevant or affected by this proposal.

It is noted that although the objective of Direction 1.1 Business and Industrial Zones is to encourage employment growth in suitable locations, the Direction does not apply to the planning proposal as it does not affect land within an existing or proposed business or industrial zone.

Table 5 Section 9.1 Ministerial Direction assessment

Directions	Consistent	Reasons for Consistency or Inconsistency
1.2 Rural Zones	Does not apply	<p>Direction 1.2 applies to a planning proposal which will affect land within existing rural land. The planning proposal is not rezoning land from a rural zone to an industrial zone.</p> <p>However, the addition of general industrial permitted uses, is similar to a sub-zone within the Primary Production zone.</p>
1.5 Rural Lands	No	<p>The planning proposal states it is not inconsistent with this Direction as justified by the proponent's Agricultural Viability Assessment that concludes the site is small, in a degraded state, has a dwelling approval and therefore cannot provide a viable commercial agricultural use. The proposal also states it is consistent with strategic plans and strategies.</p> <p>It is considered that the proposal is not consistent with the Direction. Historically the site has been a small rural hobby lot with a dwelling entitlement and Transport for NSW's Phase 1 and Phase 2 Environmental Land Assessment found no traces of contaminants and that the land remained suitable for zoning as RU1 Primary Production.</p> <p>The proposal would introduce a range of industrial uses which have the potential to create land use conflict on rural zoned land and for surrounding rural lands.</p> <p>It may also hinder the ability of the site to be considered for investment in productive, diversified, innovative and sustainable rural economic activities, which are consistent with the Direction's objectives and site's RU1 Primary Production zone objectives.</p>

2.3 Heritage Conservation	Yes	<p>The planning proposal refers to an Aboriginal Heritage Due Diligence Assessment and European Heritage Assessment as not having identified any items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance on in close proximity to the site. These reports were not included in the planning proposal and can therefore not be verified. The proposal states that 'further assessment is not deemed necessary at this time.'</p> <p>The past use of the site as an office/works site and its subsequent rehabilitation has disturbed the landscape.</p> <p>The LEP includes Clause 5.10 Heritage Conservation which sets requirements at the development assessment stage for environmental, Aboriginal and heritage items.</p>
2.6 Remediation of Contaminated Land	Yes	<p>The planning proposal does not include a Stage 1 Land Contamination Assessment. The proposal assumes that the site was remediated following its use as a Transport for NSW office depot. It states that 'no evidence of land contamination was found when walking the site.'</p> <p>The Department's discussions with Transport for NSW have confirmed that a Phase 1 and Phase 2 Environmental Land Assessment was undertaken prior to the release of the land for sale. The report found no traces of contaminants and that the land remained suitable for zoning as RU1 Primary Production.</p> <p>This report has not been included, or referred to, in the planning proposal.</p>
5.10 Implementation of Regional Plans	No	Refer to Section 3.1 above

6.3 Site Specific Provisions	Unknown	<p>The planning proposal states that it is consistent with clause 4(c) as it is allowing land uses on the site without imposing any development standards or requirements in addition to those already contained in the Kiama LEP.</p> <p>The Council report of 20 July 2021 states 'Council can amend Schedule 1 in such a way so as to, with a relatively high amount of certainty, ensure the outcome of any future development application. For example, rather than simply listing general industries and landscaping material supplies as APUs on the site, Council could stipulate the specific business types and sizes of industries for this site.' The need for such site specific provisions raises questions around the suitability of the proposed APU's rather than zoning the site for general industries if warranted.</p> <p>The planning proposal contains and refers to drawings that show details of the development proposal, however these drawings and details have been used by the supporting studies and assessments to illustrate the impacts and management of industrial uses on the site. This inconsistency with clause 5 of the Direction is considered to be minor.</p>
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3.4 State environmental planning policies (SEPPs)

The planning proposal identifies that SEPP 55 Remediation of Land, SEPP (Primary Production and Rural Development) 2019 and SEPP (Infrastructure) 2007 apply to the proposal.

SEPP 55 no longer contains provisions relating to the zoning of land. As discussed in Table 5 above, a Phase 1 and Phase 2 Environmental Land Assessment was undertaken by Transport for NSW prior to the sale of the Lot and the report found no traces of contaminants.

The SEPP (Primary Production and Rural Development) 2019 contains provisions relating to State significant agricultural lands; sustainable aquaculture and livestock industries; irrigation and waterbodies; and subdivision standards for non-Standard LEPs and rural sharing communities. The planning proposal does not impact on any of these provisions. The SEPP is therefore not applicable/relevant to this planning proposal.

The planning proposal has identified that 'if the proposal were approved, a subsequent development application for the buildings would qualify as a traffic generating development with relevant size and/or capacity under Clause 104 of the SEPP (Infrastructure) 2007 as an industrial development of over 5,000m² site area, within 90m of a Classified Road (northbound on-ramp of the Princes Highway). Formal referral to Transport for NSW (TfNSW) would be necessary.'

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 6 Environmental impact assessment

Environmental Impact	Assessment
Biodiversity	The planning proposal states that the 'site's previous use for agriculture/cattle grazing and as an office site for Transport for NSW has reduced its biodiversity values. A preliminary biodiversity assessment has not identified any critical habitat or threatened species, populations or ecological communities, or their habitats, that will be adversely affected as a result of the proposed industrial development.' No further assessment is required.
Impacts on agricultural lands	<p>The planning proposal is supported by an Agricultural Viability Assessment which concludes that the 'agriculture potential no longer exists due to the soil and land disturbance; the Lot's small size makes it impossible for commercial agriculture; the planning proposal will not have an adverse impact on the agricultural values of rural land; and from an agricultural perspective there is no reason why the land should not be General Industry and Landscape Material Supplies land uses.' The earlier version of the Assessment also concluded that 'there is no reason why the land should not be rezoned to industrial.'</p> <p>As discussed in Table 5 above, a Phase 1 and Phase 2 Environmental Land Assessment was undertaken by Transport for NSW prior to the sale of the Lot and the report found no traces of contaminants and that the land remained suitable for zoning as RU1 Primary Production.</p> <p>The Lot has been used for rural purposes in the past and has had a dwelling entitlement and therefore despite its temporary use as a depot presumably remains suitable for rural use.</p> <p>Introducing a range of industrial uses on the site has the potential to create land use conflict with surrounding rural lands.</p>
Water quality	<p>The planning proposal 'expects that water quality measures will be incorporated into the future development approval works to protect downstream riparian health.' The concept masterplan shows a stormwater detention basin to manage runoff from the proposed development and site.</p> <p>With little information provided on whether the site can be connected to the sewer, the proposal is considered to have the potential to impact on water quality, particularly with regard to the industrial uses proposed.</p>

Eastern Gas Pipeline Easement

The Eastern Gas Pipeline Easement (of 20 metre width) runs in a north to south direction within the western third of the Lot (refer to **Figure 5**). Jemena Eastern Gas Pipeline Pty Ltd provided a submission during Kiama Council's pre-Gateway community consultation on the planning proposal. Jemena objected to the proposal noting that it 'has not had time to undertake a full detailed engineering and land use assessment of the planning proposal, due to not being notified, however Jemena objects to the planning proposal and has concerns regarding a number of issues:

- The proponent has not consulted with Jemena regarding the proposed development on the property.
- The reports presented for the planning proposal, have a very limited if any reference to the gas pipeline easement and the potential impact of the development upon the gas pipeline.
- Jemena objects to changing the land zoning from rural to industrial as this has the potential to increase the risk to the gas transmission pipeline.
- Jemena requires a safety management study to be undertaken to determine the threats presented by the development and the controls required to mitigate the threats.'

No reference has been made in the planning proposal to the NSW Department of Planning, Industry and Environment planning circular PS 18-010 Development Adjacent to high pressure pipelines transporting dangerous goods.

Visual amenity –
including character
and form

The concept masterplan includes conceptual landscape screening to mitigate the visual impacts of the buildings on the surrounding landscape from both the Princes Highway, Sims Road, Gerringong township and adjacent farmland.

The Visual Impact Assessment states that the site 'is visually and physically contrasting to its agricultural neighbouring fields to the north and west'. Whilst the site is small in area it has similar landscape features to the neighbouring fields. The ground contouring, kikuyu grass groundcover, and electricity transmission lines which dominate the site continue on either side of the Lot to the adjoining properties and beyond.

The Assessment identifies three unique landscape zones within the visual catchment of the site. The Princes Highway zone divides the rural farmlands zone from the Gerringong urban zone through its linear, concrete nature. The Assessment concludes that the proposal will have a low impact on the visual sensitivity level, magnitude of impact and landscape character of the Princes Highway and Gerringong urban zones but a moderate impact on the rural farmlands zone.

The Assessment discusses that the proposed land use change will reduce the uninterrupted farmland to the west of the Highway in both a northerly and southerly direction along the Highway, however, justifies the change based on the previous use of the site by Transport for NSW. It also states that the 'likely impacts arising from the proposed industrial development will be of a similar nature and scale as previously experienced in this location with the operation of the site for the roadworks by Transport for NSW.' Transport for NSW's use of the site was short-term, temporary for approximately three years and returned the landscape character to its previous form. The proposed use of the site for industrial uses is a long-term, permanent change.

The proposed screen plantings along the Lot boundaries is seen as 'a solution to improve the visual quality of the site from its current degraded state; mitigate the visual impact on a driver's experience as they pass the site, for the neighbouring rural residents, visitors to the winery, and urban residents; and reduce the visual impact of any proposed structures to an acceptable level'.

Jemena Pty Ltd has objected to the vegetation planting over its Eastern Gas Pipeline Easement as 'this can pose an unacceptable risk to the pipeline'. It is expected that Endeavour Energy would have similar concerns to vegetation plantings under and within the electricity lines and easement. As such, the proposed landscape plantings will need to be managed and may not screen all of the proposed industrial development. Also, the screening itself will alter the current lush rural landscape with open pastures. Whilst there are some tree plantings along farm fences and farm dwellings they are not to the extent and density proposed to screen the industrial development.

The Assessment also proposes the 'use of colour palettes and material that reflect the rural architecture of the adjacent farmland zone to assist in relating any new structures to their surroundings. The land use change process would be well served by applying building design principles into any consent that reflect the rural architectural character of the immediate surrounds through limited building form and material and colour palette selections. Any design controls would be best placed in a Development Control Plan and/or development consent rather than through the LEP amendment.'

4.2 Social and economic

The planning proposal states that the ‘social and economic impacts related to the planning proposal and associated land use change are considered minimal in the context of the proximity of the site to the adjacent Gerringong township and existing services.’ The proposal provides some assessment of the economic impacts.

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 7 Social and economic impact assessment

Social and Economic Impact	Assessment
Rural residential housing or tourism opportunity	As discussed in Point 1.4 Site description, the Lot has historically been a small rural lot with a dwelling. The current approved dwelling house consent remains a permissible land use on the site. The site has potential for agritourism.
Noise	<p>An Environmental Noise Impact Assessment has been prepared to address the potential for noise impacts arising from the operation of the industrial buildings - likely to include truck movements, yard machines (bobcats, etc), forklift movements, use of power tools and operation of mechanical plant such air compressors or air conditioning condensers.</p> <p>Background noise monitoring has been undertaken near to the two closest residential receptor locations – 215m to the closest residence to the east in Victoria Street, Gerringong and 230m to the closest residence to the north west, noting that it wasn't practical to measure at the residence so the measurements were taken on the north west corner of Lot 40. The background noise at the residence may be lower than those measured on the Lot and hence project noise levels may vary.</p> <p>The Assessment has used the NSW Environment Protection Authority's Noise Policy for Industry 2017, which is designed for large industrial and agricultural sources and specifies substantial monitoring and assessment.</p> <p>Calculations in the Assessment show that the level of noise emission from the operation of the use of any future industrial premises, will easily meet the project noise trigger levels at all receptor locations, particularly during the daytime and evening periods. Noise controls may be required for future developments if they are required to operate at night.</p> <p>The Assessment concludes that ‘individual noise assessments will be required for any future development applications for the industrial premises and activities and there is no reason acoustically that the subject land cannot be used for general industries and landscape material supplies’.</p>

Economic viability and impacts	<p>The Economic Impact Assessment report identifies the 'associated land use change is likely to add to the economic viability of Gerringong township, including the business community in and surrounding the CBD and the wider Kiama LGA.</p> <p>'The proposal would address a severe shortage of industrial land in the Kiama LGA, resulting in a net increase of 2.95ha of industrial land and a 63% increase in industrial land supply.'</p> <p>The assessment concludes that 'future development of the site is expected to generate an additional \$20 million in annual GRP for the Kiama LGA and support around 62 full-time jobs on the site'. The planning proposal states that this 'comparison is made against little economic gains for the existing approval on the site for single detached dwelling.'</p> <p>The Assessment relies upon the Agricultural Viability Assessment's conclusion that 'the site is no longer suited for agricultural uses.'</p> <p>The planning proposal states 'it is not anticipated to negatively impact the Illawarra Agricultural Region and is well-buffered to ensure little impact on adjoining landowners.</p> <p>The Economic Impact Assessment did not consider potential economic impacts of the proposed industrial uses on adjoining/surrounding rural land uses.</p> <p>While the introduction of industrial uses on the site would no doubt have economic benefits, this would apply to any new industrial land. It would be preferable to take a strategic approach to identifying new industrial lands.</p>
Traffic management	<p>The planning proposal will generate additional traffic which has been considered in a Traffic and Parking Impact Assessment.</p> <p>It is expected based on the proposed nature and scale of the concept masterplan that both road access points from Sims Road would be required to service the development, particularly considering that vehicles up to 20m long will be facilitated and would otherwise be required to turn around within the site.</p> <p>It is expected that the high range traffic generation of the site based on the concept masterplan will be approximately 73 (59 in, 14 out) and 80 (16 in, 64 Out) vehicle trips during the AM and PM peak hours, respectively. This includes staff, visitors, and commercial vehicles.</p> <p>The impacts on the major intersections indicate minimal delays and additional capacity, indicating that there will be negligible impact on the existing road network as a result of the planning proposal.</p> <p>The application of the Kiama DCP calculates the requirement of 93 car parking spaces (based on requirements for light industries as the DCP doesn't include car parking requirements for general industries).</p> <p>The proposal has not investigated or addressed the impact of traffic and car parking on Jemena's Eastern Gas Pipeline easement. Jemena has objected to the installation of car parking and hard stand areas upon the gas easement and has reserved the right to object to road crossings of the pipeline.</p>
Odour, dust and Lighting	<p>The Agricultural Viability Assessment states 'given the relatively small area of Lot 40, its land use change is unlikely to result in a scale of future development that would generate dust emissions, excessive noise or intense lighting which would adversely affect continued agricultural use of the adjoining properties.'</p>

4.3 Infrastructure

The site is well served by road infrastructure and connections to and from the Princes Highway.

The planning proposal does not discuss other service infrastructure requirements but notes that ‘as a requirement of the planning proposal and Gateway Determination process, confirmation of capacity of the site to reconnect to existing services such as infrastructure, including sewer treatment, water, electricity, telecommunications and stormwater drainage should be undertaken. It is understood that past RMS use of the site did previously establish such infrastructure connection and reconnection will be negotiated with the relevant necessary public infrastructure authority to achieve the intended land use change outcomes.’

There remains uncertainty about the ability to provide infrastructure to the site. This is considered to be an important issue and servicing should be understood prior to any Gateway being issued. The Department when rejecting the earlier planning proposal required that this issue needed to be addressed in the planning proposal when seeking a Gateway determination.

The Department understands that water and sewer infrastructure does not extend to the western side of the Princes Highway. The consent for the dwelling house on the Lot identifies on site effluent disposal and the collection of rainwater for house and fire-fighting supplies.

The impacts on the Eastern Gas Pipeline infrastructure and easement have not been adequately addressed as discussed in point 3.1 above.

5 Consultation

5.1 Community

Kiama Council previously undertook Pre-Gateway community consultation of the planning proposal (version 1) on 28 April to 11 May 2021 and in accordance with the Kiama Community Consultation Plan 2019. 49 submissions were received, 17 of which were in support of the proposal, 31 opposing the proposal and one requesting that no decision is made before the upcoming Council elections. A petition of approximately 600 individuals was also received.

Key issues for supporting the proposal include limited industrial land in Gerringong and the broader Municipality; opportunity for more local jobs; and proposal will support other local businesses.

Key issues against the proposal include sufficient industrial land in Gerringong and broader Municipality; site should be used for agricultural purposes and undesirable precedent and associated development impacts.

In addition to direct representations made to the Department by community members, the local State Member for Kiama, the Hon. Gareth Ward MP has written to the Minister for Planning (30 June 2021) stating he ‘strongly opposes the proposal and for the Minister to do all within his power to strongly reject it’. His reasons for opposing the proposal include:

- totally incongruous with the village character of Gerringong
- would open the door for other similar proposals which would change the nature of prime agricultural land that surrounds Gerringong
- there is no sewer or water on the western side of the Princes Highway
- the argument that the site was used for the construction of the Princes Highway upgrade is not an appropriate argument for rezoning. The site was a temporary use and it is nonsense to argue for a permanent rezoning on this basis.
- the traffic analysis contradicts the proponent’s claim that traffic movements will be negligible.

- objectives 9 and 22 of the Illawarra Shoalhaven Regional Plan specifically mention Gerringong and the need to protect agricultural land and minimise land conflicts; and embrace and respect the highly valued local character and lifestyle.
- The scenic landscape would be impacted upon by the site of a large industrial development which conflicts with the character of Gerringong.

The planning proposal proposes a community consultation period of 28 days. Should the planning proposal proceed this consultation period would be reasonable.

5.2 Agencies

The planning proposal does not identify agency consultation and no details are available on the planning portal.

This component of the planning proposal has not been assessed, as the Department does not support the planning proposal proceeding.

6 Timeframe

The planning proposal includes a project timeline which seeks 8 months to finalise the LEP.

This component of the planning proposal has not been assessed, as the Department does not support the planning proposal proceeding.

7 Local plan-making authority

The planning proposal identifies that the Minister for Planning will make the Plan. Council has identified on the planning portal that it would like to exercise its functions as a Local Plan-Making Authority.

This component of the planning proposal has not been assessed, as the Department does not support the planning proposal proceeding.

8 Assessment Summary

The planning proposal is not supported to proceed for the following reasons:

- The planning proposal has not justified its strategic and site-specific merits.
- The planning proposal is not consistent with the Illawarra Shoalhaven Regional Plan, Kiama Local Strategic Planning Statement and other local plans and strategies.
- The use of Additional Permitted Uses as proposed is considered to be complicated and confusing involving multiple additional uses on rural zoned land. Zoning land for its intended purpose is a preferred approach.
- The supply of additional industrial land is best considered through a Council led strategic approach rather than by allowing additional permitted uses on this site akin to a spot rezoning. The Department understands Council is considering preparing an Employment Lands Strategy in conjunction with the current preparation of the Kiama Housing Strategy to identify future urban development within the local government area.
- Inconsistencies with section 9.1 Directions 1.5 Rural Lands, 5.10 Implementation of Regional Plans and 6.3 Site Specific Provisions have not been adequately justified.
- The planning proposal has not confirmed that infrastructure and services including water and sewer are available to service industrial uses.
- The site is constrained by the Jemena Eastern Gas Pipeline and potential impacts of the proposal on the high-pressure pipeline, including a risk assessment are not addressed.

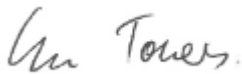
9 Recommendation

It is recommended that the delegate of the Secretary:

- agree that any inconsistencies with section 9.1 Directions 1.5 Rural Lands, 5.10 Implementation of Regional Plans and 6.3 Site Specific Provisions have not been adequately justified.

It is recommended that the delegate of the Minister determine that the planning proposal should not proceed for the following reasons:

- The planning proposal has not justified its strategic and site-specific merits.
- The planning proposal is not consistent with the Illawarra Shoalhaven Regional Plan, Kiama Local Strategic Planning Statement and other local plans and strategies.
- The use of Additional Permitted Uses as proposed is considered to be complicated and confusing involving multiple additional uses on rural zoned land. Zoning land for its intended purpose is a preferred approach.
- The supply of additional industrial land is best considered through a Council led strategic approach rather than by allowing additional permitted uses on this site akin to a spot rezoning.
- Inconsistencies with section 9.1 Directions 1.5 Rural Lands, 5.10 Implementation of Regional Plans and 6.3 Site Specific Provisions have not been adequately justified.
- The planning proposal has not confirmed that infrastructure and services including water and sewer are available to service industrial uses.
- The site is constrained by the Jemena Eastern Gas Pipeline and potential impacts of the proposal on the high-pressure pipeline, including a risk assessment are not addressed.



26/11/21

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29/11/2021

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